IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.111 OF 1992

Hanif Ibrahim Navadekar
R/o. Kacchi Moholla,
Panvel, District-Raigad. .. **Appellant**
(Original claimant)

..**versus**.

State of Maharashtra .. **Respondent**
(Original opponent)

.....

Mr. Sachin Punde i/b Mr. Rajiv Patil, Advocate for the appellant,

Mr. S.N. Gawade, A.G.P. for the respondent/State.

.....

Coram : K.J. Rohee, J.

Reserved on : 16th March, 2006.

Pronounced on : 29th March, 2006.

Oral Judgment :

1. The appellant (hereinafter referred to as a claimant) has preferred this appeal against the Judgment and Award passed by the 3rd Additional District Judge, Raigad (Alibag) in Land Acquisition Reference No.390 of 1986 on 5.11.1990.

2. The claimant is the owner of land Survey No.1 measuring 2 A 2 G = (1 H 1 R i.e. 10,100 sq.mtr) Assessment Re.1/- Varkas land situated at village Chal, Tahsil – Panvel, District – Raigad (Alibag). The Commissioner of Bombay Division issued preliminary Notification under section 4 of the Land Acquisition Act, 1894 for acquisition of the said land for ***"New Bombay Project".*** A Declaration under section 6 of the Land Acquisition Act was made on 10.5.1976 by the Commissioner of Bombay Division. The Special Land Acquisition Officer, M.O. II - Panvel passed an Award on 26.11.1985 fixing the market value of the said land at Rs.2/- per sq. mtr. The total market value of the land

acquired was Rs.20,200/- plus solatium of Rs.6,060/- plus interest from 25.10.1973 to 26.11.1985 at the rate of 12 % per annum amounting to Rs.29,296.75 ps. Thus the total compensation payable to the claimant was Rs.55,556.75 ps.

3. On the application made by the claimant, a Reference under section 18 of the Land Acquisition Act was made to the District Judge, Alibag. According to the claimant the market value of his land was Rs.50,000/- per acre, however, the Land Acquisition Officer held that the market value of the land is Rs.8,000/- only per acre. According to the claimant the Land Acquisition Officer took into account the market value of the year 1970, whereas he should have taken into consideration the market value of the said land prevalent in 1985-86 when the possession of the land was taken by the State. The claimant submitted that the acquired land has got non-agricultural potential. The industrial area is close to the said land. The road to the industrial area as well as road to Ulhas Nagar are also

close to the said land. There was great demand to the said land for residential purposes. Hence the claimant claims Rs.1,25,000/- as compensation plus Rs.37,500/- as solatium at the rate of 30 %.

4. The respondent resisted the claim by filing written statement. According to the respondent notice under section 9 (3 & 4) of the Land Acquisition Act was served on the claimant, however, the claimant did not put his claim and as such the Reference itself is not tenable. The respondent further submitted that the claim made by the claimant is exorbitant and is not based on sale statistics. The compensation granted to the claimant is reasonable and adequate and that the Reference is liable to be dismissed.

5. The claimant examined his younger brother Mohd. Sale Ibrahim Navadekar as PW 1 and J.N. Kulkarni (Valuer) as PW 2 in support of his claim. After considering the oral and documentary evidence on record the Reference Court held that the compensation granted to

the claimant is inadequate and improper and that the claimant is entitled to get enhanced compensation. The Reference Court found that the market value of the said land is Rs.11/- per sq. mtr.

6. Being dissatisfied with this Judgment and Award the claimant has preferred the present appeal.

7. I have heard Mr. Sachin Punde i/b Mr. Rajiv Patil, Advocate for the appellant/claimant and Mr. S.N. Gawade, AGP for the respondent/State. I have also gone through the record and proceedings of the Reference Court.

8. The following points arise for my determination and I give my findings on them as under :

Points	**Findings**
(i) Whether the Reference itself was not maintainable in the absence of the claimant having put his claim after service of notice u/s 9 (3 & 4) of the Land Acquisition Act, 1894 .?.....	The Reference was tenable.

(ii) Whether the claimant is entitled to the compensation more than what has been granted by the Reference Court.? ..... Yes.

(iii) What order .? ..... As per final order.

REASONS

9. Mr. Gawade, the learned AGP for the respondent-State, vehemently urged that even after individual notice was served on the claimant under section 9 of the Land Acquisition Act, the claimant did not prefer any claim before the Land Acquisition Officer, hence the claimant is debarred from claiming increase in the compensation. In support of his plea Mr. Gawade placed reliance on the decision of the Division Bench of this Court in **State of Maharashtra .vrs. Shri Dhanaji Kamalu Joshi, First Appeal No.430 of 1993, decided on 1st September, 2005.**

10. I have carefully gone through the said judgment. In

the said case the claimant had filed his claim in response to the notice under section 9 of the Land Acquisition Act by restricting his claim to certain amount. On this background the Division Bench observed that there was total prohibition against the grant of compensation in excess to the amount claimed by the claimant in answer to the notice under section 9 of the Land Acquisition Act. It was further observed that Section 25 (1) of the Land Acquisition Act, prior to the amendment i.e. Prior to 24-9-1984 did not permit the enhancement of compensation over and above the amount claimed by the claimant in answer to the notice under section 9 of the Land Acquisition Act. In my humble opinion the said ruling would not apply to the present case because Section 25 was amended with effect from 24.9.1984 and in the present case the record does not show that the claimant was served prior to the amendment to Section 25. It may be noted that by the said amendment the restriction on the Court in awarding compensation more than what has been claimed by the

claimant in response to notice under section 9 of the Land Acquisition Act has been removed. As such the present case does not come within the parameter of the case relied upon by the learned AGP. Hence it will have to be held that the Reference was tenable.

11. Mr. Sachin Punde, the learned counsel for the appellant/claimant, submitted that the Reference Court has not given any reason for fixing the market value of the land in question at Rs.11/- per sq. mtr. He further submitted that the market value of the land situated at village Chal, Tah. Panvel and District - Raigad and which was the subject matter of the same notification has been fixed at Rs.15/- per sq. Meter by the Division Bench of this Court and hence the same should be granted in this case. In this respect, Mr. Punde relied on the judgment of the Division Bench **dated 31st August, 2004 in First Appeal No.1049 of 1989 with First Appeal No.391 of 1989 and First Appeal No.758 of 1996 with First Appeal No.1219 of 1996.**

12. I have carefully gone through the said judgment. The Division Bench has set out some criteria and fixed the market value of the land at village Chal at Rs.15/- per sq. mtr. I see no reason to disagree with the view taken by the Division Bench of this Court. I, therefore, hold that the appellant/claimant is entitled to market price at Rs.15/- per sq. mtr instead of Rs.11/- per sq. mtr as fixed by the Reference Court. In view of this, I pass the following order :

13. The appeal is allowed. The respondent shall pay market value at the rate of Rs.15/- per sq. mtr to the claimant u/s 23 (1) of the Land Acquisition Act,1894; interest at the rate of 12 % per annum u/s 23 (A) of the said Act and solatium at the rate of 30 % u/s 28 of the said Act plus proportionate cost.

14. A decree be drawn up accordingly.

(K. J. Rohee, J.)